

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

PATRICIA LEE FENNELL, §
Plaintiff §
vs. § CIVIL ACTION NO 5:18-CV-01267
THE UNITED STATES OF AMERICA, § JURY REQUESTED
Defendant. §

PLAINTIFF'S ORIGINAL COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES, Plaintiff, PATRICIA LEE FENNELL, and files this PLAINTIFF'S ORIGINAL COMPLAINT under the provisions of *Federal Tort Claims Act*, 28 U.S.C. 1346(b), 2671, *et.seq*, complaining of Defendant, THE UNITED STATES OF AMERICA, and for cause of action would respectfully show the Court and Jury the following:

A. PARTIES

1. Plaintiff, PATRICIA LEE FENNELL, is a resident of Bexar County, Texas.
2. Defendant is THE UNITED STATES OF AMERICA. Service will be perfected on Defendant, THE UNITED STATES OF AMERICA, by serving the United States Attorney for the Western District of Texas, John F. Bash, 601 NW Loop 410, Suite 600, San Antonio, Texas 78216, along with Acting Attorney General of The United States of America, Matthew G. Whitaker, U.S. Department of Justice Building, 950 Pennsylvania Avenue, NW, Washington, DC 20530-0001, along with the United States Post Master General, Megan J. Brennan, 475 L'Enfant Plaza S.W., Washington, DC 20260.

B. VENUE

3. Plaintiff invokes the jurisdiction of this Court because the action arises under the *Federal Tort Claims Act*, 28 U.S.C. 1346(b), 2671, *et.seq.* The unlawful or actionable practices alleged in this Complaint were committed in San Antonio, Bexar County, Texas, in the Western District of Texas.

C. NATURE OF THE CASE

4. Plaintiff, PATRICIA LEE FENNELL, is a citizen on the United States and a resident of San Antonio, Bexar County, Texas, in the Western District of Texas. Plaintiff brings suit to recover damages for personal injuries. In this regard Plaintiff would show that Plaintiff was traveling eastbound in the 2700 block of Culebra Street near the intersection of 28th Street, when a postal carrier employee, GREGORY CHILDRESS BANE, was traveling in a northerly direction in the 3300 Block of NW 28th Street came through a stop sign and struck the right side of the vehicle Plaintiff was driving resulting in injury to the Plaintiff.

D. ADMINISTRATIVE RESPONSIBILITIES

5. Plaintiff, PATRICIA LEE FENNELL, has satisfied and exhausted all private, judicial and administrative responsibilities required to file suit. PATRICIA LEE FENNELL, representing herself and without assistance of counsel, forwarded notice of her claim (Form 95) on June 12, 2017 (received by the United State Postal Service on July 5, 2017). She received notice that her claim was denied on May 29, 2018. On June 11, 2018, she requested reconsideration filed by counsel. On June 21, 2018, that reconsideration was denied by the United States Postal Service. On October 10, 2018, recognizing that PATRICIA LEE FENNELL, in filing her Form 95, neglected to fill in an amount, counsel forwarded a statutorily compliant Form 95. The Form 95 was rejected by United States Postal Service. The Form 95 in question was provided

prior to the expiration of two (2) years from the date of incident and prior to the expiration of the six (6) months from the time of a denial for reconsideration. Plaintiff files her suit within six (6) months from that date as required under the *Federal Tort Claims Act*.

E. UNDERLYING FACTS OF THE CASE

6. On or about June 12, 2017, Plaintiff, PATRICIA LEE FENNELL, was legally and lawfully operating her 2014 Flack Toyota Avalon, traveling eastbound in the 2700 block of Culebra Street near the intersection of 28th Street, when a postal carrier employee, GREGORY CHILDRESS BANE, was traveling in a northerly direction in the 3300 Block of NW 28th Street. The intersection of these two well-travelled routes was governed by a stop sign control on 28th Street traffic. GREGORY CHILDRESS BANE came through the stop and struck the right side of the vehicle Plaintiff was driving resulting in injury to the Plaintiff. The vehicle collision caused by the negligence of the United States Postal employee was the cause of serious and painful injuries to the right side, neck, low back and arm of the Plaintiff, PATRICIA LEE FENNELL.

F. PLAINTIFF'S FIRST CAUSE OF ACTION

7. Plaintiff, PATRICIA LEE FENNELL, brings this suit for injuries under the provisions of 28 U.S.C. 134(b), Defendant, THE UNITED STATES OF AMERICA, its servants and employees were at all times herein mentioned, negligent in the operation of the vehicle in which the postal employee was using while delivering mail. GREGORY CHILDRESS BANE was an employee of the Defendant and was acting within the course and scope of his office or employment and had a duty to exercise ordinary care to operate the mail truck reasonable and prudently. Under the laws of the State of Texas, a private person would be liable to Plaintiffs for this action or omission. The San Antonio Police Department, the law enforcement agency which investigated the accident scene, found a contributing factor of the collision was "faulty evasive

action" on the part of the United States Postal driver, GREGORY CHILDRESS BANE. The actions of GREGORY CHILDRESS BANE, the employee and agent of the UNITED STATES POSTAL SERVICE, caused the June 21, 2017, collision involving the Plaintiff and the Defendant.

G. PLAINTIFF'S DAMAGES

8. As a direct and proximate result of the negligent conduct of the actions of the employee and agent of the UNITED STATES POSTAL SERVICE, GREGORY CHILDRESS BANE, Plaintiff has sustained, and in all reasonable probability will sustain the following damages for which she now sues:

- a) Past reasonable and necessary medical expenses;
- b) Reasonable and necessary medical expenses which, in reasonable medical probability, will be incurred in the future;
- c) Physical pain and suffering in the past;
- d) Physical pain and suffering which, in reasonable medical probability, will be incurred in the future;
- e) Mental pain, suffering and anguish suffered in the past;
- f) Mental pain, suffering and anguish which, in all reasonable medical probability, will be suffered in the future;
- g) Physical impairment in the past;
- h) Physical impairment which, in all reasonable medical probability, will be suffered in the future;
- i) Pre-judgment interest; and,
- j) Post-judgment interest.

H. PRAYER

WHEREFORE, PREMESIS CONSIDERED, Plaintiff, PATRICIA LEE FENNELL, requests the Defendant, THE UNITED STATES OF AMERICA, be called to appear and answer herein and that upon trial Plaintiff have:

- a. Judgment against the Defendant for actual and compensatory damages as set forth above in the amount of not less than One Million Dollars (\$1,000,000.00);
- b. Pre-judgment and post judgment interest on said judgment at the maximum rate allowed under law;
- c. All costs herein expended; and,
- d. Such other and further relief, general or special, at law or in equity, to which Plaintiff may show herself justly entitled.

Respectfully submitted,

LAW OFFICE OF HOWARD E. DAVIS, P.C.

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